21 C.J.S. Courts § 236

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Courts
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VI. Rules of Adjudication, Decisions, and Opinions

C. Law of the Case

§ 236. Final or interlocutory determinations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Courts 99(3) to 99(5)

The law of the case doctrine generally applies to final determinations that were made after a hearing on the merits although there is some question whether it applies to interlocutory rulings.

A decision or ruling is the law of the case only if it is a binding adjudication[1] or final judgment.[2] The doctrine therefore does not apply to a statement or expression by the court that does not constitute a final adjudication,[3] such as a statement of dicta.[4] Also, the doctrine presumes a hearing on the merits, and thus, the prior denial of a petition for certiorari because of a lack of a quorum does not bar later consideration of the issue presented.[5]

The law of the case doctrine does not operate to prevent a district court from reconsidering prior rulings, as a court has the power to revisit prior decisions of its own in any circumstance,[6] even when a case is reassigned from one judge to another in the same court.[7] Thus, an interlocutory order ordinarily may be reconsidered and corrected before entering a final order on the merits.[8] Thus, the doctrine does not apply to decisions by a motions panel[9] or bind a trial judge to a motion judge's decision to deny a motion to dismiss.[10] However, there is also some authority that the law of the case does apply to interlocutory orders[11] or that its application is discretionary in this context,[12] and a court has only limited authority to reconsider its earlier decision pursuant to a rule allowing an interlocutory order or decision to be revised prior to the entry of final judgment.[13] In any event, the doctrine will not bar reconsideration of a renewed motion when evidence has been introduced that significantly changes the record.[14]

CUMULATIVE SUPPLEMENT

Cases:

The law of the case doctrine has no bearing on the revisiting of interlocutory orders, even when a case has been reassigned from one judge to another; in this context, the doctrine is merely a presumption, one whose strength varies with the circumstances. Fed. R. Civ. P. 54(b). Ortiz v. New Mexico, 550 F. Supp. 3d 1020 (D.N.M. 2021).

Determination made in connection with preliminary injunction is not law of the case, as that doctrine does not apply to interlocutory rulings. Durel v. Acadian Ear, Nose, Throat & Facial Plastic Surgery, APMC, 356 So. 3d 1010 (La. 2023).

Law of the case doctrine did not apply to bar judge who took over case from previous judge, who had presided over part of jury selection but was unable to continue because of illness, from admitting as excited utterance the statement of an unidentified declarant, heard in background of 911 call made by one of the victims, that implicated defendant, even though the previous judge had made a contrary ruling on the excited utterance issue, in prosecution of defendant on assault and weapons charges. People v. Cummings, 31 N.Y.3d 204, 75 N.Y.S.3d 484, 99 N.E.3d 877 (2018).

Law-of-the-case doctrine did not apply to preclude trial court from reconsidering its earlier evidentiary ruling during trial, since the issue was decided by the same court. Gonzalez-Chavarria v. State, 2019 WY 100, 449 P.3d 1094 (Wyo. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. v. Robinson, 724 F.3d 878 (7th Cir. 2013).

Ky.—Kudelle v. Vizzard Inv. Co., 194 Ky. 604, 240 S.W. 54 (1922).

N.Y.—Station Pump & Tank Maintenance & Const., Inc. v. Score Oil Corp., 112 A.D.2d 931, 492 N.Y.S.2d 449 (2d Dep't 1985).

Pa.—Skelton v. Lower Merion Tp., 318 Pa. 356, 178 A. 387 (1935).

2 U.S.—U. S. v. U. S. Smelting Refining & Min. Co., 339 U.S. 186, 70 S. Ct. 537, 94 L. Ed. 750 (1950).

3 U.S.—Potts v. Village of Haverstraw, 93 F.2d 506 (C.C.A. 2d Cir. 1937).

Ga.—Wilson v. State, 173 Ga. 275, 160 S.E. 319 (1931).

Iowa—Crawford v. Emerson Const. Co., 222 Iowa 378, 269 N.W. 334 (1936).

4 U.S.—Ducey v. U.S., 830 F.2d 1071 (9th Cir. 1987); Romero v. Allstate Insurance Company, 2016 WL 1056698 (E.D. Pa. 2016).

N.C.—State v. Lombardo, 74 N.C. App. 460, 328 S.E.2d 780 (1985).

5 U.S.—U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).

6 U.S.—Latin American Music Co. Inc. v. Media Power Group, Inc., 705 F.3d 34, 84 Fed. R. Serv. 3d 943 (1st Cir. 2013); Zarnow v. City of Wichita Falls, Tex., 614 F.3d 161 (5th Cir. 2010); Mocek v. City of Albuquerque, 3 F. Supp. 3d 1002 (D.N.M. 2014).

7 U.S.—Stewart v. Beach, 701 F.3d 1322 (10th Cir. 2012).

8 U.S.—Union Mut. Life Ins. Co. v. Chrysler Corp., 793 F.2d 1, 20 Fed. R. Evid. Serv. 1024 (1st Cir. 1986).

Alaska—C.J.M. Const., Inc. v. Chandler Plumbing & Heating, Inc., 708 P.2d 60 (Alaska 1985).

Conn.—Ratner v. Willametz, 9 Conn. App. 565, 520 A.2d 621 (1987).

D.C.—Sowell v. Walker, 755 A.2d 438 (D.C. 2000).

On motion in limine to exclude witness
D.C.—Jung v. George Washington University, 875 A.2d 95, 198 Ed. Law Rep. 911 (D.C. 2005), opinion amended on other grounds on reh'g, 883 A.2d 104 (D.C. 2005).

9 U.S.—Law v. National Collegiate Athletic Ass'n, 134 F.3d 1025, 124 Ed. Law Rep. 33 (10th Cir. 1998).

10 U.S.—United States ex rel. Landis v. Tailwind Sports Corp., 2016 WL 593443 (D.D.C. 2016).

11 R.I.—Gucfa v. King, 865 A.2d 328 (R.I. 2005).

12 U.S.—In re Cabletron Systems, Inc., 311 F.3d 11 (1st Cir. 2002).

N.J.—State v. Reldan, 100 N.J. 187, 495 A.2d 76 (1985).

13 U.S.—Official Committee of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP, 322 F.3d 147, 54 Fed. R. Serv. 3d 1241 (2d Cir. 2003).

14 R.I.—Kelley v. Cowesett Hills Associates, 768 A.2d 425 (R.I. 2001).

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